

Notice Number

Date

LOCAL FINANCE NOTICECHRISTINE TODD WHITMAN
GOVERNORHARRIET DERMAN
COMMISSIONERBETH GATES
DIRECTOR**AMENDMENTS TO DEVELOPER ESCROW ACCOUNTING LAW**

Significant and important changes to the management of developer escrow funds were made in Chapter 54 of the Laws of 1995. They affect the procedures and practices employed by local governments when professional services are used (either by employees or through professional service agreements) to review and inspect land use developments and the use of developer funds, "escrow deposits," to pay for the work.

Local government officials receiving this Local Finance Notice should carefully review the requirements of the law as it relates to their activities and immediately take action to bring local procedures into compliance.

The law was the subject of long and intense discussions between representatives of municipal governments, including finance officers, engineers and planners, builder and developer groups, and the Department of Community Affairs. The original bill was extensively amended as a result of these negotiations and requires DCA's Commissioner to report to the Legislature after two years on how well it has worked.

The bill was enacted on March 17, effective six months from the date it was enacted, or September 17, 1995. Because of the scope of the amendments, virtually all municipalities will have to modify existing practices. Municipal officials should take immediate action to comply with the Act by making the necessary changes in local procedures.

Significant changes are made to the billing and reporting requirements imposed on municipal governments on the use of developer funds, the information contained on vouchers, setting of fees in advance by official action, and creation of an appeal process for disputed deposits and bills. The changes reflect the fact that the funds being used are not the municipality's, and that their use should be strictly controlled with full accountability.

This Notice has four parts. They include:

1. A list of suggested actions that local governments should take to comply with the law, and several interpretations about various aspects of the law.
2. A narrative summary of the requirements with which local government agencies, developers, and professionals must comply.

3. A reprint of the law with a Division annotation summarizing each section. Local officials should study these carefully to ensure compliance.
4. A comment form is attached for local officials to let DCA know about problems, questions, or interpretations necessary to comply with the law. It can also be used to tell the Department about local solutions or innovative practices.

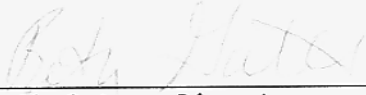
While information from submissions of the comment forms will assist us in developing rules for the program, local legal counsel should be consulted until rules are promulgated through the New Jersey Administrative Code, or guidance provided through a Local Finance Notice. DCA Commissioner Harriet Derman is also planning to establish an Advisory Committee consisting of representatives of the interested parties to advise her on issues that require resolution.

It is also suggested that professional organizations, such as the Government Finance Officers Association, Tax Collectors and Treasurers Association, New Jersey Society of Municipal Engineers, or New Jersey Planning be contacted for advice on common practices as well. The comment form can be reproduced as necessary and should be returned to the address shown on the form.

Finance and planning officials might also consider modifying computerized accounting and development tracking systems. Banks and computer system vendors that supply these computer services are another source of assistance to handle the additional administrative and reporting requirements.

Local officials should also be aware that DCA's Division of Codes and Standards is preparing formal rules addressing the responsibilities of County Boards of Construction Appeals, as they now have authority to hear and resolve disputes over fees and deposits. When complete, they will be published in the New Jersey Register for formal comment. Please use the comment form to address questions on this program.

Municipal Clerks are asked to share copies with the the municipality's Planning and Zoning Board Administrative Officers, Municipal Attorney, Chief Administrative Officer, and any other officials who need to be aware of the changes.



Beth Gates, Director
Division of Local Government Services

Enclosures
Distribution: Chief Financial Officers
Municipal Clerk

WHAT THE MUNICIPALITY SHOULD BE DOING

The following checklist can be used to assist local officials in meeting their obligations under the law. Of overriding importance to successfully implementing the law, is for the Chief Financial Officer or other finance staff, and the local Land Use Administrators, Board Secretaries, and professionals to establish and maintain strong communication links.

1. Actions taken by the Chief Financial Officer should include:
 - a) Prepare formal procedures for submission of vouchers and payments; establish forms if necessary.
 - b) Prepare to issue monthly and quarterly reports to developers.
 - c) Consult with Land Use Boards on fees for municipal employees.
 - d) Ensure consultation with appropriate staff to ensure deposits do not fall below \$0.00, and to provide notice to developers when they do.
2. Land Use Boards and Governing Bodies need to coordinate activities and take formal action to:
 - a) Pass resolutions setting professional charges.
 - b) Eliminate all overhead charges.
 - c) Update application fee ordinances to cover costs of municipal administration.
 - d) Adopt an ordinance for fee deposit schedule using a lot based fee for subdivisions and area for site plans.
3. Land Use Professionals (consulting and employees) must prepare to:
 - a) Submit vouchers with full time, rate and personnel details.
 - b) Send copies of vouchers to developers.

*New Jersey Department of Community Affairs
Division of Local Government Services*

**1995 Developer Escrow State Amendments
(P.L. 1995, c.54, N.J.S.A. 40:55D-53.2 et seq.)**

Summary of Changes

I. Definitions used in this text

- A. Escrow or escrow account - any fees deposited by a developer to pay for municipally incurred expenses in the review of an application or inspections of a project under development, and the accounting entries used to keep track of expenditures.
- B. Developer - any applicant for development project - either awaiting approval or approved with improvements being made.

II. 40:55D-53.2(a) — Payment of Escrow Fees

- A. Clarifies that the Chief Financial Officer of the municipality is responsible for making escrow payments for all land use board or administration expenditures
- B. Requires that all plan review and inspection fees or charges must be set by resolution by the land use agency (planning board or zoning board of adjustment) or municipal governing body.
- C. Application review and project inspection charges are for professional services only; and outside consultants are permitted only if work is beyond the scope of regular municipal staff.
- D. Cost add-ons for professional services may only be for out-of-pocket expenses for inspections and plan reviews.
- E. Charges for clerical, overhead, meeting rooms or other costs are prohibited.
- F. When municipal staff is used, fees are limited to 200% of salary, and rates must be the same as the municipality pays for the same professional service for its own work.

III. 40:55D-53.2(b) — Calculation and payment escrow charges and deposits

- A. Requires fees to be reasonable in relation to the project.
- B. The amount of the initial deposit must be set by ordinance.
- C. For subdivisions - the deposit must be based on the number of lots.
- D. Site plan fees must be formula based, using at least one of:
 - 1. area of site to be developed
 - 2. building square footage to be constructed

3. Sites that are circulation intensive (i.e. drive-in facilities) can utilize a factor to increase the deposit.
- E. Additional deposits must be made in accordance with 40:55D-53, which outlines a payment mechanism (included in the enclosures)

IV. 40:55D-53.2(c) — Escrow payment and reporting requirements

- A. All escrow charges must be made by voucher, which must contain the following:
 1. Which employee did the work
 2. The date and total hours spent on the work (to quarter hour increments)
 3. Hourly rate and calculation of the cost.
 4. The Division has determined that signed cover vouchers with attachments containing the required information can be considered a voucher.
- B. Vouchers from professionals must be submitted on a monthly basis on a schedule set by the Chief Financial Officer in accordance with procedures set by the CFO.
- C. If work is done by employees, rather than outside professionals, the same information must be submitted.
- D. The professional must send copies of vouchers to the developer, and the CFO must send a statement with all transactions for the period to the developer. The statement must be itemized by transaction and showing any balances at the end of the period.
- E. The information to the developer is provided monthly, unless the charges are less than \$1,000 where they can be sent quarterly.
- F. If the account is running out of funds, the CFO must notify the developer of the shortfall, and provide reasonable time for additional funds to be posted.
- G. If there is a shortfall, work cannot be halted unless reasonable time for additional funds has been provided. A negative account balance is permitted if the work being done is health and safety required.

V. 40:55D-53.2(d) — Close out procedure

- A. Plan review close out begins after final approval has been granted and plans signed; project improvement close out commences after improvements have been approved pursuant to relevant law.
- B. Close out commences with notice from developer or Chief Financial Officer, approving authority (land use board for plan review, or governing body/engineer for improvements), and to professionals.
- C. Professionals have 30 days to submit final bills to CFO and developer.
- D. After the 30 days tolls, CFO has 45 days to do final accounting and return remaining funds.

VI. 40:55D-53.2(e) — About professional charges

- A. Standard of work: all professional charges must be reasonable and necessary given the work to be done.
- B. Fees can only be charged for review of pending applications and review of compliance with plans and work related to it.
- C. Local professionals cannot review items that are reviewed by a State agency, unless consultation is required.
- D. Inspection fees can only be charged for actual work shown on plans and for inspections reasonably necessary to check on "progress and quality of work" and must be based on the approved plans and documents.

VII. 40:55D-53.2(f) — Change in professional

- A. If the municipality changes professionals mid-application review or project, municipality is responsible for all costs to make new professional familiar with the work and cannot charge the developer for any extra costs.

VIII. 40:55D-43.2a(a) — Appeal of Costs and charges

- A. Applicants can appeal engineer's cost estimates of improvements (40:55D-53.4) and actual costs incurred by a professional for review or inspection.
- B. Developer must notify governing body, CFO and professional of appeals in writing.
- C. Governing body or designee has reasonable time to resolve disputes.
- D. Unsatisfied developer can appeal estimates or charges to County Construction Board of Appeals. Appeals must be in writing and copies sent to all parties.
- E. Appeals must be filed within 45 days of receipt of copy of voucher; if voucher is not supplied, appeal can be 60 days from receipt of accounting statement.
- F. Ongoing appeals can be filed if pattern of overcharging is alleged. This can be done generally, without appealing each bill.

IX. 40:55D-43.2a(b) & (c) — Appeal hearings

- A. County Board must act within 10 days of receipt of appeal - applicant can agree to extend the time period.
- B. Decisions can modify charges already made; copies of decision must be provided to all parties.
- C. Failure of Board to hear the claim within time limits results in denial of claim (which can be appealed to court).
- D. County Construction board sets their own rules, has subpoena power as an investigatory body.

X. 40:55D-43.2a(d) — While an appeal is taking place

- A. All work is permitted to continue without any adverse action taken by the municipality toward the developer.
- B. CFO must continue to make payments from escrow; if charges are disallowed, account is to be reimbursed or applicant refunded.
- C. If an outside professional's fees are affected, the professional must reimburse the municipality.
- D. Other law (52:27D-127) provides for County Construction Boards to have membership expanded by an engineer with municipal construction experience and a builder to decide appeals.

XI. 40:55D-43.2a(e) — Administrative Provisions

- A. DCA Commissioner can promulgate rules.
- B. Commissioner must report to the Legislature within two years on the affect of the law; the report must describe the appeal process and make recommendations for action to provide a fair and efficient appeal process.

*New Jersey Department of Community Affairs
Division of Local Government Services*

**DEVELOPER ESCROW ACCOUNT ADMINISTRATION
COMMENT FORM**

Comment Sender:

Name: _____

Position: _____

Organization: _____

Address: _____

Telephone: _____ Fax: _____

Use this space to describe any problems, observations, needed interpretations, or innovative approaches regarding escrow account administration. Please attach any copies of correspondence, forms or other material that will support your comment. All submissions will be acknowledged.

Please send this form to:
Developer Escrow Account Program
N.J. Division of Local Government Services
CN 803, Trenton NJ 08625-0803

New Jersey Department of Community Affairs
Division of Local Government Services

CHAPTER 54, P.L. 1995
1995 Developer Escrow Statute Amendments
DLGS Annotation with Narrative Commentary

AN ACT concerning certain fees required under the "Municipal Land Use Law," amending P.L.1991, c.256 and P.L.1975, c.217, and supplementing P.L.1993, c.32 (C.40:55D-40.1 et seq.).

Bold numbers (1.) are for reference purposes only and do not appear in the text of the law. *Italicized text* represents additions to the original law. Strikeouts represent text eliminated from the original law. DLGS commentary is for general guidance only. Consult legal counsel for formal interpretations.

N.J.S.A. 40:55D-53.2 Municipal payments to professionals for services rendered; determination

COMMENT

Subsection a

1. The *chief financial officer of a municipality* shall make all of the payments to professionals for services rendered to the municipality *or approving authority* for review of applications for development, review and preparation of documents, inspection of improvements or other purposes under the provisions of P.L. 1975, c. 291 (C.40:55D-1 et seq.).
 2. *Such fees or charges shall be based upon a schedule established by resolution.*
 3. *The application review and inspection charges shall be limited only to professional charges for review of applications, review and preparation of documents and inspections of developments under construction and review by outside consultants when an application is of a nature beyond the scope of the expertise of the professionals normally utilized by the municipality.*
 4. *The only costs that shall be added to any such charges shall be actual out-of-pocket expenses of any such professionals or consultants including normal and typical expenses incurred in processing applications and inspecting improvements.*
 5. *The municipality or approving authority shall not bill the applicant, or charge any escrow account or deposit authorized under subsection b. of this section, for any municipal clerical or administrative functions, overhead expenses, meeting room charges, or any other municipal costs and expenses except as provided for in this section, nor shall a municipal professional add any such charges to his bill.*
 6. If the salary, staff support and overhead for a municipal professional are provided by the municipality, the charge shall not exceed 200% of the sum of the products resulting from multiplying (1) the hourly base salary, which shall be established annually by ordinance, of each of the professionals by (2) the number of hours spent by the respective professional upon review of the application for development or inspection of the developer's improvements, as the case may be. For other professionals the charge shall be at the same rate as all other work of the same nature by the professional for the municipality *when fees are not reimbursed or otherwise imposed on applicants or developers.*
- Makes CFO responsible for making all escrow payments for land use board (approving authority) or administration expenditures.
 - All fees and charges must be set by resolution.
 - Limits charges to professional services and only use outside services when outside the scope of regular professionals.
 - Only additions are out-of-pocket for professionals.
 - No charging for municipal clerical, overhead or administrative expense in any way.
 - Continues existing 200% of hourly rate as maximum. Requires fees of non-employee professionals charged to applicants to be the same as those paid by the municipality for its own work.

Subsection b

1. If the municipality requires of the developer a deposit toward anticipated municipal expenses for these professional services, the deposit shall be placed in an escrow account pursuant to section 1 of P.L.1985, c.315 (C.40:55D-53.1).
 2. *The amount of the deposit required shall be reasonable in regard to the scale and complexity of the development.*
 3. *The amount of the initial deposit required shall be established by ordinance.*
 4. *For review of applications for development proposing a subdivision, the amount of the deposit shall be calculated based on the number of proposed lots.*
 5. *For review of applications for development proposing a site plan, the amount of the deposit shall be based on one or more of the following: the area of the site to be developed, the square footage of buildings to be constructed, or an additional factor for circulation-intensive sites, such as those containing drive-through facilities.*
 6. *Deposits for inspection fees shall be established in accordance with subsection h. of section 41 of P.L.1975, c.291 (C.40:55D-53).*
- Continues use of developers escrow accounts.
 - Requires fees to be reasonable in comparison to the project.
 - Initial deposit amounts set by ordinance.
 - Must use a lot based formula for subdivision fees.
 - Fees for site plans must be based on area, size of structures, or for drive throughs, traffic flow based amount.
 - Phasing of deposit payments must conform to existing law.

Subsection c

1. Each payment charged to the deposit *for review of applications, review and preparation of documents and inspection of improvements* shall be pursuant to a voucher from the professional, *which voucher shall identify the personnel performing the service, and for each date the services performed, the hours spent to one-quarter hour increments, the hourly rate and the expenses incurred.*
 2. *All professionals shall submit vouchers to the chief financial officer of the municipality on a monthly basis in accordance with schedules and procedures established by the chief financial officer of the municipality.*
 3. *If the services are provided by a municipal employee, the municipal employee shall prepare and submit to the chief financial officer of the municipality a statement containing the same information as required on a voucher, on a monthly basis.*
 4. *The professional shall send an informational copy of all vouchers or statements submitted to the chief financial officer of the municipality simultaneously to the applicant. The chief financial officer of the municipality shall prepare and send to the applicant a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements, and the cumulative balance of the escrow account.*
 5. *This information shall be provided on a quarterly basis, if monthly charges are \$1,000 or less, or on a monthly basis if monthly charges exceed \$1,000.*
 6. *If an escrow account or deposit contains insufficient funds to enable the municipality or approving authority to perform required application reviews or improvement inspections the chief financial officer of the municipality shall provide the applicant with a notice of the insufficient escrow or deposit balance.*
 7. *In order for work to continue on the development or the application, the applicant shall within a reasonable time period post a deposit to the account in an amount to be agreed upon by the municipality or approving authority and the applicant. In the interim, any required health and safety inspections shall be made and charged back against the replenishment of funds.*
- Requires all escrow charges to be made by voucher, which must detail who did the work, date, and hours spent in quarter hour increments, rate, and expense.
 - CFO sets policy on monthly submission of vouchers.
 - If work done by employees, same information must be submitted.
 - Professional must send copies of vouchers or reports to applicants/ developer. CFO must send a statement with all account transactions summarized.
 - Report to developer quarterly if monthly charge less than \$1,000. Monthly if more.
 - If account has insufficient funds to do the work, CFO must provide notice to developer.
 - Can't stop work without reasonable time to post additional funds. While waiting, authority is granted to continue health and safety work and carry a negative balance.

Subsection d

1. *The following close-out procedure shall apply to all deposits and escrow accounts established under the provisions of P.L. 1975, c.291 (C.40:55D-1 et seq.) and shall commence after the approving authority has granted final approval and signed the subdivision plat or site plan, in the case of application review escrows and deposits, or after the improvements have been approved as provided in section 41 of P.L. 1975, c.291 (C.40:55D-53), in the case of improvement inspection escrows and deposits.*
 2. *The applicant shall send written notice by certified mail to the chief financial officer of the municipality and the approving authority, and to the relevant municipal professional, that the application or the improvements, as the case may be, are completed.*
 3. *After receipt of such notice, the professional shall render a final bill to the chief financial officer of the municipality within 30 days, and shall send a copy simultaneously to the applicant.*
 4. *The chief financial officer of the municipality shall render a written final accounting to the applicant on the uses to which the deposit was put within 45 days of receipt of the final bill.*
 5. *Any balances remaining in the deposit or escrow account, including interest in accordance with section 1 of P.L. 1985, c. 315 (C.40:55D-53.1), shall be refunded to the developer along with the final accounting.*
- Mandates close out process that starts after final approvals granted and plats or plans signed. For improvements, after completion.
 - Applicant starts it with notice that work is completed.
 - After notice, professionals have 30 days to send in final billing to CFO and applicant.
 - CFO has 45 days after 30 days to submit final accounting.
 - At that point, all balances to be refunded.

Subsection e

1. *All professional charges for review of an application for development, review and preparation of documents or inspection of improvements shall be reasonable and necessary, given the status and progress of the application or construction.*
 2. *Review fees shall be charged only in connection with an application for development presently pending before the approving authority or upon review of compliance with conditions of approval, or review of requests for modification or amendment made by the applicant.*
 3. *A professional shall not review items which are subject to approval by any State governmental agency and not under municipal jurisdiction except to the extent consultation with a State agency is necessary due to the effect of State approvals in the subdivision or site plan.*
 4. *Inspection fees shall be charged only for actual work shown on a subdivision or site plan or required by an approving resolution. Professionals inspecting improvements under construction shall charge only for inspections that are reasonably necessary to check the progress and quality of the work and such inspections shall be reasonably based on the approved development plans and documents.*
- Generally, all charges must be reasonable and necessary given the work to be done.
 - Review fees charged only for pending applications and work related to it.
 - Local professionals cannot review any items that are reviewed by a state agency, unless consultation is required.
 - Inspection fees can be charged only for work required on plans, and only for inspections necessary to check on progress and quality of work and based on plans.

Subsection f

1. *If the municipality retains a different professional or consultant in the place of the professional originally responsible for development, application review, or inspection of improvements, the municipality or approving authority shall be responsible for all time and expenses of the new professional to become familiar with the application or the project, and the municipality or approving authority shall not bill the applicant or charge the deposit or the escrow account for any such services.*
- If a municipality changes professionals mid-project, the municipality is responsible for all charges to bring new one up to speed. Cannot bill for that aspect.

N.J.S.A. 40:55D-53.4 Municipal engineer to estimate cost of installation of improvements.

1. The cost of the installation of improvements for the purposes of section 41 of P.L. 1975, c.291 (C.40:55D-53) shall be estimated by the municipal engineer based on documented construction costs for public improvements prevailing in the general area of the municipality.
2. The developer may appeal the municipal engineer's estimate to the governing body *county construction board of appeals established under section 9 of P.L. 1975, c.217 (C.52:27D-127).*

- Engineer bases cost estimates on area practices.
- Appeals of cost estimates go to County Construction Board of Appeals.

N.J.S.A. 40:55D-53.2a Applicant notification to dispute charges; appeals; rules, regulations.

Subsection a

1. *An applicant shall notify in writing the governing body with copies to the chief financial officer, the approving authority and the professional whenever the applicant disputes the charges made by a professional for service rendered to the municipality in reviewing applications for development, review and preparation of documents, inspection of improvements, or other charges made pursuant to the provisions of P.L. 1975, c.291 (C.40:55D-1 et seq.).*
2. *The governing body, or its designee, shall within a reasonable time period attempt to remediate any disputed charges.*

- For an appeal of any charges, applicant must notify governing body, board, CFO and professional in writing.
- Governing body or designee has reasonable time to fix any charges.

3. *If the matter is not resolved to the satisfaction of the applicant, the applicant may appeal to the county construction board of appeals established under section 9 of P.L. 1975, c. 217 (C.52:27D-127) any charge to an escrow account or a deposit by any municipal professional or consultant, or the cost of the installation of improvements estimated by the municipal engineer pursuant to section 15 of P.L. 1991, c. 256 (C.40:55D-53.4).*
4. *An applicant or his authorized agent shall submit the appeal in writing to the county construction board of appeals. The applicant or his authorized agent shall simultaneously send a copy of the appeal to the municipality, approving authority, and any professional whose charge is the subject of the appeal.*
5. *An applicant shall file an appeal within 45 days from receipt of the informational copy of the professional's voucher required by subsection c. of section 13 of P.L. 1991, c. 256 (C.40:55D-53.2), except that if the professional has not supplied the applicant with an informational copy of the voucher, then the applicant shall file his appeal within 60 days from receipt of the municipal statement of activity against the deposit or escrow account required by subsection c. of section 13 of P.L. 1991, c. 256 (C.40:55D-53.2).*
6. *An applicant may file an appeal for an ongoing series of charges by a professional during a period not exceeding six months to demonstrate that they represent a pattern of excessive or inaccurate charges. An applicant making use of this provision need not appeal each charge individually.*

- If applicant not satisfied by local efforts, appeal can go to County Construction Board Of Appeals.
- Appeal must be in writing and copies sent to all parties affected by it.
- Appeals must be filed within 45 days of receipt of a voucher. If voucher not supplied, then appeal can be 60 days from receipt of accounting statement.
- Ongoing appeals may be filed when pattern of overcharging is alleged. Can be done generally, without appealing each bill.

Subsection b

1. *The county construction board of appeals shall hear the appeal, render a decision thereon, and file its decision with a statement of the reasons therefor with the municipality or approving authority not later than 10 business days following the submission of the appeal, unless such period of time has been extended with the consent of the applicant.*
2. *The decision may approve, disapprove, or modify the professional charges appealed from. A copy of the decision shall be forwarded by certified or registered mail to the party making the appeal, the municipality, the approving authority, and the professional involved in the appeal.*
3. *Failure by the board to hear an appeal and render and file a decision thereon within the time limits prescribed in this subsection shall be deemed a denial of the appeal for purposes of a complaint, application, or appeal to a court of competent jurisdiction.*

- County Board must act within 10 days of receipt. Applicant can agree to extend time.
- Decision can change charges; copies sent to all parties.
- Failure of Board to hear results in denial.

Subsection c

The county construction board of appeals shall provide rules for its procedure in accordance with this section. The board shall have the power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant evidence, and the provisions of the "County and Municipal Investigations Law," P.L.1953, c.38 (C.2A:67A-1 et seq.) shall apply.

- County Boards sets their own rules, and has subpoena power as an investigatory body.

Subsection d

1. *During the pendency of any appeal, the municipality or approving authority shall continue to process, hear, and decide the application for development, and to inspect the development in the normal course, and shall not withhold, delay, or deny reviews, inspections, signing of subdivision plats or site plans, the reduction or the release of performance or maintenance guarantees, the issuance of construction permits or certificates of occupancy, or any other approval or permit because an appeal has been filed or is pending under this section.*
 2. *The chief financial officer of the municipality may pay charges out of the appropriate escrow account or deposit for which an appeal has been filed.*
 3. *If a charge is disallowed after payment, the chief financial officer of the municipality shall reimburse the deposit or escrow account in the amount of any such disallowed charge or refund the amount to the applicant.*
 4. *If a charge is disallowed after payment to a professional or consultant who is not an employee of the municipality, the professional or consultant shall reimburse the municipality in the amount of any such disallowed charge.*
- During an appeal process, all work on application or project must continue normally, without any adverse action by municipality on applicant.
 - CFO continues to make payments out of account during appeal process.
 - If charges are disallowed, escrow account is to be reimbursed or applicant refunded.
 - If an outside professional's fees are affected, professional must reimburse municipality.

Subsection e

1. *The Commissioner of Community Affairs shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this section.*
 2. *Within two years of the effective date of P.L.1995, c.54 (C.40:55D-53.2a et al.), the commissioner shall prepare and submit a report to the Governor, the President of the Senate, and the Speaker of the General Assembly.*
 3. *The report shall describe the appeals process established by section 3 of P.L.1995, c.54 (C.40:55D-53.2a) and shall make recommendations for legislative or administrative action necessary to provide a fair and efficient appeals process.*
- Commissioner can promulgate rules.
 - Commissioner must report within 2 years on affect of the law.
 - Report reviews appeal process and makes recommendations on any necessary changes.

N.J.S.A. 52:27D-127 Construction board of appeals

Subsection a

1. There shall be a construction board of appeals for each county to hear appeals from decisions by the enforcing agency provided that any municipality may establish its own construction board of appeals to hear appeals from decisions by the enforcing agency and further provided that where two or more municipalities have combined to appoint a construction official and subcode officials such combined municipalities may establish a joint construction board of appeals. Any such municipal or joint board shall hear appeals from the decisions of the municipal or joint enforcing agency, as the case may be, instead of the county board.
 - Existing law established County Construction Code Board of Appeals.
2. Every construction board of appeals shall consist of five members. Each member of the board shall be qualified by experience or training to perform the duties of members of the construction board of appeals.
 - Boards have five regular members
3. *In addition to the five regular members, each construction board of appeals shall include two special members, one of whom shall be a licensed professional engineer with municipal construction experience, and one of whom shall be a builder. The special members shall serve as additional members of the board in any case involving an appeal of municipal fees pursuant to P.L. 1995, c.54 (C.40:55D-53.2 et al.).*
 - Adds a PE with municipal improvement and builder to the Board as special members for fee appeals.
4. Board members shall be appointed for a term of 4 years by the appointing authority of the county or municipality in question or, in the case of a joint municipal board, by means mutually determined by the governing bodies of such municipalities. For the members first appointed, the appointing authority shall designate the appointees' terms so that one shall be appointed for a term of 1 year, one for a term of 2 years, one for a term of 3 years, and two for a term of 4 years. Vacancies on the board shall be filled for the unexpired term. Members may be removed by the authority appointing them for cause. A person may serve on more than one construction board of appeals.
 - Terms of Board members.

Subsection b

1. When an enforcing agency refuses to grant an application or refuses to act upon application for a construction permit, or when the enforcing agency makes any other decision, pursuant or related to this act or the code, an owner, or his authorized agent, may appeal in writing to the county or municipal or joint board, whichever is appropriate.
2. The board shall hear the appeal, render a decision thereon and file its decision with a statement of the reasons therefor with the enforcing agency from which the appeal has been taken not later than 10 business days following the submission of the appeal, unless such period of time has been extended with the consent of the applicant.
3. Such decision may affirm, reverse or modify the decision of the enforcing agency or remand the matter to the enforcing agency for further action. A copy of the decision shall be forwarded by certified or registered mail to the party taking the appeal. Failure by the board to hear an appeal and render and file a decision thereon within the time limits prescribed in this subsection shall be deemed a denial of the appeal for purposes of a complaint, application or appeal to a court of competent jurisdiction.
4. A record of all decisions made by the board, properly indexed, shall be kept by the enforcing agency and shall be subject to public inspection during business hours.
5. The board shall provide rules for its procedure in accordance with this act and regulations established by the commissioner.

- Construction code appeal process
- Boards must act within 10 days from filing.
- How actions affect construction code officer actions.
- Board must keep appropriate records.
- Board can set rules in accordance with law and DCA rules.

Enactment Date

This act shall take effect 180 days after enactment, except that a municipality may implement these policies prior thereto.

Enacted March 17, 1995.

- Effective date is six months from enactment, (September 17, 1995, but policies can be adopted at any time.